

FTB NOTICE

California Franchise Tax Board - Legal Division



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FTB NOTICE 93-2

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Subject: 1992 LEGISLATIVE CHANGES; STATUTE OF LIMITATIONS RUNS FROM ORIGINAL DUE DATE

Recent statutory amendments clarify that the Franchise Tax Board may not issue refunds or make assessments more than four years after the original due date of the return without regard to extensions. Therefore, in most cases 1988 calendar year corporate claims must be made by March 15, 1993; 1988 calendar year Personal Income Tax refund claims must be made by April 15, 1993. It had been Franchise Tax Board practice to accept claims filed within four years of the extended due date of the return. (See the Appeal of Stephanie Kennedy, Cal. St. Bd. of Equal., March 3, 1982.)

Senate Bill 1684, Stats. 1992, Ch. 1295, made various technical and clarifying changes to various provisions of the Revenue and Taxation Code. Specifically, Revenue and Taxation Code sections 18588 and 25663 (statute of limitations for assessments), and sections 19053 and 26073 (statute of limitations on refunds), were amended to provide that the statute of limitations commences from the last day prescribed by law for filing (determined without regard to any extension of time for filing the return).

The bill was not a tax levy, nor did it declare that it took effect immediately as an urgency statute or contain an appropriation for current expenses. Therefore, (as the bill was enacted September 30, 1992, more than 90 days before January 1) under Article IV, Section 8(c)(2) of the California Constitution, the effective date of the act was January 1, 1993. Under Revenue and Taxation Code sections 17034(c) and 23058(c), the provisions of the bill must be applied on and after the date the act takes effect.

The effect of a statutory change to the statute of limitations was considered by the California Supreme Court in Mudd v. McColgan (1947) 30 Cal.2d 463; and Edison California Stores v. McColgan (1947) 30 Cal.2d 472. In both cases, the court held that, where a change in the length of the statute of limitations occurred, the change properly applied to all pending issues then open under the statute of limitations at the time of the change, regardless of tax year.

Therefore, on and after January 1, 1993, in determining whether a claim for refund is timely filed or an assessment is timely made before the 4-year statute of limitation period, the Franchise Tax Board must look to the original due date of the return, without regard to extensions.

For example, unless the statute of limitations has been extended by waiver or is open under a different statute, refund claims filed or assessments made for calendar year 1988 must be filed or made on or before:

- (a) with respect to individuals, April 15, 1993; and
- (b) with respect to banks and corporations, March 15, 1993.

DRAFTING INFORMATION

The principal author of this notice is Bruce R. Langston of the Franchise Tax Board Legal Division. For further information regarding this notice, contact Mr. Langston at the Franchise Tax Board Legal Division, P.O. Box 1468, Sacramento, CA 95812-1468.